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**HUMAN RIGHTS IN SOUTHEAST ASIA**

**CHOOSING A PATH FOR THE UNITED STATES**

**CORE COURSE IV PAPER**

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## **HUMAN RIGHTS IN SOUTHEAST ASIA CHOOSING A PATH FOR THE UNITED STATES**

Charting the response to perceived violations of basic human rights in other countries has proved to be a daunting task for United States policy makers. Countries characterized by strong centralized governments have been especially resistant of efforts by those who sought to moderate the respective country's behavior with respect to their own populations. Curiously, while the end of the cold war may have altered, and to some extent lessened, the threat to human rights in some parts of the world, it has exacerbated the problem in other sections of the globe. Nevertheless, some scholars see an increased movement in the international struggle for universally recognized human rights. They offer the 1993 UN World Conference on Human Rights in Vienna as proof of a grassroots movement for increased democracy and human rights.<sup>1</sup> Unfortunately, governments in Southeast Asia remain largely resistant to this movement. The recalcitrance on the part of these governments to embrace expanded human rights is problematic for United States policy makers.

This paper will first examine the possible security ramifications for the United States in light of continued human rights violations in Southeast Asia. To limit the scope of the paper, I will concentrate the discussion on the United States' response to human rights violations in two Southeast Asia countries Indonesia and Singapore. Both countries drew unfavorable comment from the

recent US State Department report on human rights I'll then review the options available to United States decision makers and propose a course of action

In starting this discussion, a threshold question needs to be posed and addressed. Do human rights violations in other countries have any possible ramifications for the national security of the United States? A partial answer to that question is articulated in the 1994 edition of the *National Security Strategy of the United States*. In that publication, President Clinton declared that a central goal of his administration was (and is) the promotion of free market democracies in the world. A subset of that goal is the guarantee of basic human rights on a global basis.<sup>2</sup> The President amplified these goals during his June 1993 visit to the Far East. He set four priorities for US security policy for Asia: (1) continued military commitment to the region, (2) combating the proliferation of weapons of mass destruction, (3) regional dialogue for common security challenges, and (4) support for democracy and more open societies throughout the region.<sup>3</sup> The President's vision of this part of the world is not shared by all Americans

At a time when this country carries a huge national debt and significant domestic problems, many Americans seem ready to adopt an isolationist view and ignore human rights issues outside of this country. This is a simplistic view of the world. Curiously, many Americans seemingly agreed with then candidate Clinton when he chided President Bush with his slogan, "It's the economy stupid." Likewise, most Americans accept the proposition that democracies do not

normally make war against each other, and that our security is enhanced when other countries embrace democracy and establish free market societies. What must also be recognized is the tie between the guarantee of basic human rights in other countries of the world and the economic and security interests of the United States

Timothy Worth, former Senator from Colorado who represented the United States at the World Conference on Human Rights in 1993, capsulated the point by noting, "Countries that protect human rights and promote democracy contribute to world stability and to a safer, more prosperous environment for the US "<sup>4</sup> Obviously democratic governments that foster open and free societies are more likely to guarantee basic human rights Ambassador Winston Lord, Assistant Secretary of State for East Asia and Pacific Affairs, remarked in a 1994 address to the Institute for National Strategic Studies, "When we support open societies we are promoting a more peaceful, stable world Open democracies do not practice terrorism They do not produce refugees They do not drive groups into armed opposition We believe human rights and economic and security interests are mutually reinforcing over the long run "<sup>5</sup>

One mark of an open society is a free press An uncensored press is essential in identifying corruption and governmental excesses Such an open system not only aids in the struggle for human rights by spotlighting abuses for comment and response by the entire world. but a free press can reveal

governmental corruption While bribery of government officials is considered a cost of doing business in some parts of the world, Americans find the practice repugnant Every effort to lessen the practice of bribery in foreign countries benefits American companies that seek to do business overseas

In a similar vein, a legal system which functions to protect the basic human rights of a country's citizens will also serve to protect the rights and interests of Americans The rights of individuals becomes especially important when the United States contemplates the stationing of military forces within the territorial limits of a foreign country With some limited exceptions, Status of Forces agreements generally call for US military members to be tried for alleged offenses by the host nation<sup>6</sup> Likewise if an American is found guilty by the foreign court, he or she is then punished in accordance with the law of the host country This is a troublesome prospect when we consider that Singapore, site of the Michael Fay caning, has taken on additional importance following the loss of US basing rights in the Philippines More on that topic later

A functional legal system which protects basic human rights is also the primary vehicle for recourse for wronged Americans seeking to do business in a foreign country Without such a system of laws, Americans are without remedy for breaches of contract such as when McDonald's Corporation lost a 20 year lease on a prime location in Beijing Similarly, copyright and patent violations cost Americans billions of dollars per year Some estimates place losses just in

CD sales at a billion dollars per year because of Chinese counterfeiters<sup>7</sup> Simply put, American business needs a viable system of law to flourish; such a system is also necessary for the protection of basic human rights

Perhaps the most compelling reason for the United States to remain engaged in the struggle for universal human rights is that failure to do so would be an abdication of our leadership role. If we intend to remain a world power, we need to act like leaders. Ours is a nation of ideals, and our leadership role demands that we promote human rights throughout the globe. Our own values propel us to try to make a difference in the fight for human rights, and by doing so we also enhance the perception of the United States in those countries and peoples that we seek to lead and influence.<sup>8</sup> Unfortunately, our success in moderating behavior in Southeast Asia has been limited.

A study of Indonesia offers several lessons in human rights including the value of a free press and the rule of law to stem governmental abuses. Let's start with East Timor, a former colony of Portugal located on half an island 300 miles northwest of Australia. In 1975, Indonesia invaded East Timor and has occupied it continually since.<sup>9</sup> The occupation resulted in significant causalities to the Timorese. Although Indonesia officially admits to only 30,000 dead, other estimates by Amnesty International and officials of the Catholic church place the figure in excess of 200,000, one third of the population.<sup>10</sup>

The United States response to this slaughter is at best one of neglect -- at worst as an indirect contributor Philip Liechty, a former CIA operations officer stationed in the US Embassy in Jakarta in 1975, declares, "Suharto was given the green light (by the US) to do what he did. There was discussion in the embassy .. and the State Department about the problems that would be created .. if the public and Congress became aware of the level and type of military assistance that was going to Indonesia at that time." The US public was largely ignorant of the problems in East Timor It has been alleged that between the start of the invasion and the Dili massacre 15 years later none of the major television networks carried a single story concerning the slaughter and the print media only occasionally mentioned the killings<sup>11</sup>

That ignorance was wiped away in November 1991, when a funeral evolved into a political demonstration against Indonesian control in a cemetery near Dili In an effort to quell the demonstration, Indonesian troops opened fire and killed at least 270 people<sup>12</sup> After two American journalists reported the massacre, world opinion compelled President Suharto to appoint a commission of inquiry to investigate the matter At its conclusion, 10 army men were court-martialed -- the maximum sentence imposed was 18 months Conversely, the maximum sentence for young Timorese who conducted a peaceful march in Jakarta to protest the killings was 10 years!

In reaction to these events, Senators Pell and Boren personally informed President Suharto that these events negatively impacted on US relations. At the July 1992, World Bank meeting of donor governments, the United States alone protested the situation in East Timor.<sup>13</sup> A few months later Congress refused to continue \$2.3 million in military assistance to Indonesia which, in turn, caused combined military exercises between the US and Indonesia to be canceled.<sup>14</sup> Finally in March 1993, the United States reversed its previous policy toward the East Timor and for the first time voted in support of a UN resolution expressing "deep concern" about the situation in East Timor.<sup>15</sup>

While the numbers of extrajudicial killings has declined in East Timor, the United States Department of State report on *Human Rights Practices, 1994*, reflects the Indonesian government "imposed severe limitations on freedoms of speech, press and assembly." Widespread corruption in the legal system remains a serious problem as does the practice of torturing those who are held in custody.<sup>16</sup>

These continuing abuses drew little comment in the United States. We seem to respond only to our own direct interests. Contrast, for example, the United States' response to the slaughter of tens of thousands of people in East Timor to the official reaction of the punishment imposed upon Michael Fay.

Following his confession, Michael Fay, an 18 year old American, was convicted in Singapore of numerous acts of vandalism against private and public property. Among other criminal acts, he spray-painted cars and stole street signs.

He was sentenced to four months confinement and fined about \$2,235 He was also sentenced to six strokes of the cane <sup>17</sup>

The State Department report, *Human Rights Practices, 1994* concluded that "many critics expressed the view that caning was an excessive penalty for youthful, nonviolent, first-time offenders."<sup>18</sup> The US Embassy lodged a formal protest in response to the proposed flogging, and during a visit to Singapore, former President Bush called the punishment "brutal" Ohio Representative Tony Hall, assorted editors, and talk show hosts joined the affray and voiced their displeasure <sup>19</sup> President Clinton personally intervened He called the punishment "extreme" and warned Singapore not to carry it out <sup>20</sup> Ultimately, the sentence was reduced to 4 strokes which were duly administered

In short, our senior leaders put the prestige of the country on the line to literally protect the backside of an admitted criminal More protest was raised in behalf of Michael Fay in the relatively short time he held the country's interest than the tens of thousands of deaths by another repressive government from the same corner of the world. Interestingly, Michael Fay did not enjoy the support of the US public, most of whom supported the caning as an appropriate punishment

Not surprisingly, Singapore did not appreciate the United States meddling into what they consider their internal affairs Editorials in eastern publications reminded the United States that our cities are no longer safe and have been surrendered to "mayhem" One editorial suggested that "Mr Clinton should attend

to his own cities before he worries about ours "<sup>21</sup> Other critics of US policy find the United States to be hypocritical on two counts

First, critics from Singapore wonder why the United States is just now commenting on the canning issue, a practice Singapore learned from the British.<sup>22</sup> The point is well taken. No outrage was heard following the sentencing of a Hong Kong youth to 12 strokes for vandalism.<sup>23</sup> Nor did the United States make serious comment concerning the remaining 3000 plus judgments in Singapore which included canning as a part of the sentence.<sup>24</sup>

Secondly, the United States is coming under increasing scrutiny for the use of the death penalty. Journalists from Ireland and Britain travel to the United States to report on executions, and Mexico, which abolished the death penalty over 60 years ago, is funding the appeals for the 23 Mexican citizens who are on death row.<sup>25</sup> Recall too the case of Sgt. Short who murdered and dismembered his wife in the Netherlands. The Dutch clearly abdicated their treaty responsibility under the NATO Status of Forces Agreement by refusing to return Sgt. Short to United States custody. Citing the Treaty of Rome as authority, the Dutch refused to tender Sgt. Short to the US until they received assurances that the trial would not be tried as a capital case. Given our problems with our western brethren, Southeast Asia countries are not willing to concede that the United States holds the moral high ground on human rights issues.

Given these constraints, how should the United States respond to perceived human rights abuses in Southeast Asia? First, the United States must adopt the long view and respond to trends -- not snapshots. We must remember that these are new countries who recently cast off colonial rule and must go through some maturation process. Our own history shows genocide against the native Americans and repeated abuses of minority groups. This is not to say that we should excuse abuses by governments, but we must recognize that increasing human rights is an evolutionary process.

We also need to recognize that the very idea of a "bundle of human rights" is not generally accepted in this region. The "universality of human rights" is a western idea.<sup>26</sup> In 1993, U.S. Secretary of State Warren Christopher opined that there is a single standard of acceptable behavior all over the world and that the United States would apply it to all countries.<sup>27</sup> He did not articulate the standard. Earlier that year, Asian nations meeting in Bangkok agreed that some unspecified human rights might be universal but that the rights "must be considered in the context of a dynamic and evolving process of international norm setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds."<sup>28</sup>

While we need not accept in total the Asian view of human rights, we do need to recognize our limitations when trying to change it. We must recognize that with no overriding military threat in the region, the United States has lost a

certain amount of leverage with Southeastern Asia countries. Likewise, US aid to the region is so low that a threatened further reduction carries little weight. Moreover, economic sanctions, to include protective tariffs, generally harm us as much or more than the country we are trying to influence.

Just as economic sanctions are not the answer to human rights abuses, the military instrument is of limited value. Some respected scholars such as Justice Everett, former Chief Justice of the United States Court of Military Appeals, have contemplated using military tribunals to punish those who violate international law and basic human rights.<sup>29</sup> Obviously, this option is available only when the United States deploys troops, an unlikely prospect if the sole goal is suppression of human rights abuses given the experience in Bosnia and East Timor. Clearly the United States will not take on an expanded role as the world policeman, judge and jury. Moreover, to militarily intercede into the domestic affairs of a country could be a violation of the UN charter and other international law. In large measure that leaves diplomacy as the remaining tool to wield in response to human rights abuses.

With that in mind, I propose the United States act like a leader. We must recognize that our days of dictating policy are over. Conversely, we should attempt to moderate the behavior of foreign nations though quiet but persistent diplomacy. When we publicly whine about the fate of one American but ignore 3000 others who face the same punishment or turn a blind eye to the slaughter of

tens of thousands, we undercut our remaining credibility We should also organize regional organizations to discuss basic human rights, and we must encourage and fund nongovernmental organizations who have an interest in human rights Most importantly, we must clean up our own act. Just as we can not solve our economic problems from a purely domestic standpoint, neither can we expect other nations to follow our lead if we do not resolve social and domestic problems in the United States

While our leverage over individual countries may be less than before, the diplomatic, economic, and military might of the United States can not be ignored by repressive governments Human rights abuses in some Southeast Asia countries pose significant issues for the United States, but by exercising leadership the United States can moderate the behavior of these nations

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<sup>1</sup> John Shattuck, Overview of Human Rights Practices, 1994 (Washington DC United States Department of State, February 1995) 1

<sup>2</sup> United States, A National Security Strategy of Engagement and Enlargement (Washington DC The White House, July 1994) 20

<sup>3</sup> Michael D Bellows, Asia in the 21st Century Evolving Strategic Priorities (Washington DC National Defense University Press, 1994) 233

<sup>4</sup> Timothy E Wirth, "Redefining Human Rights," Harvard International Review, Spring 1994 41

<sup>5</sup> Michael D Bellows, 18

<sup>6</sup> The United States normally retains primary right of jurisdiction for purely military offenses and offenses which involve only Americans

<sup>7</sup> Michael Schrage, "In China, Start With Human Rights To Stop the Software Pirates," The Washington Post February 10, 1995, D3

<sup>8</sup> Ralph A Cossa, The New Pacific Security Environment (Washington DC National Defense University Press, 1993) 33

<sup>9</sup> John Pilger, "The Land of the Dead," The Nation April 25, 1994 550

<sup>10</sup> "What is the big fuss?" The Economist April 23, 1994 41

<sup>11</sup> "Hearts of Darkness," The Nation February 28, 1994 260

<sup>12</sup> "Hearts of Darkness," The Nation February 28 1994 260

<sup>13</sup> Canada boycotted the meeting for the same reason that the United States lodged the protest

<sup>14</sup> John Bresnan, From Dominoes to Dynamos (New York Council of Foreign Relation Press 1994) 67

<sup>15</sup> John Bresan 67

<sup>16</sup> US Department of State Indonesia Human Rights Practices, 1994 (Washington DC February 1995) 3

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- <sup>17</sup> Susumu Awano hara, "Whipping-Boy," Far Eastern Economic Review April 28, 1994 25
- <sup>18</sup> US Department of State, Singapore Human Rights Practices, 1994 (Washington DC February 1995) 5
- <sup>19</sup> "No Mercy," editorial, The Nation April 25, 1994 544
- <sup>20</sup> Susumu Awano hara, 25
- <sup>21</sup> Editorial Far Eastern Economic Review March 31, 1994 5
- <sup>22</sup> Susumu Awano hara, 25
- <sup>23</sup> Frank Chung, "Fay Case Collision of Values," Far Eastern Economic Review May 5, 1994 38
- <sup>24</sup> US Department of State, Singapore Human Rights Practices, 1994 6
- <sup>25</sup> Julie Corwin, "Cane Mutiny," US News & World Report April 11, 1994 15
- <sup>26</sup> Harry M Scoble, and Laurie S Wiseburg, Access to Justice (London Pitman Press, 1985) 3
- <sup>27</sup> John Bresnan, 63
- <sup>28</sup> John Bresnan, 62
- <sup>29</sup> Robinson O Everett, "Possible Use of American Military Tribunals to Punish Offenses Against the Law of Nations," 34 Virginia Journal of International Law 289, 1994